

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

INITIAL STATEMENT OF REASONS

AMEND ARTICLE 1, DEFINITIONS AND GENERAL PROVISIONS, SECTIONS 1200; ARTICLE 6.5,
CARRIER IDENTIFICATION NUMBERS, SECTIONS 1235.1 THROUGH 1235.6; AND ARTICLE 8,
SECTION 1256, IDENTIFICATION
ADOPT NEW SECTION 1235.7, LEASED VEHICLES

MOTOR CARRIER SAFETY CARRIER IDENTIFICATION (CHP-R-09-15)

EXISTING REGULATIONS AND AMENDMENTS

California Vehicle Code (VC) Section 34501 requires the Department of the California Highway Patrol (CHP) to adopt reasonable rules and regulations which, in the judgment of the Department, are designed to promote the safe operation of vehicles described in 34500 VC. Those regulations are contained in Title 13, California Code of Regulations.

Section 34507.5 VC requires certain persons, primarily motor carriers, to obtain a California Carrier Identification number, identified in regulation as a "CA number," from the CHP, and with some exceptions, to display that number on both sides of the vehicles mentioned above. During 2001/2002, in order to provide greater clarity to the enabling statute, the CHP adopted regulations relating to the assignment of carrier identification numbers. Now, however, the CHP believes that recent developments indicate that all persons who are subject to Section 34507.5 should be provided greater clarity with regard to whom the CA number should be assigned. That clarity is provided through formal adoption of regulations in Title 13 of the California Code of Regulations.

Background

The CHP promotes the safe operation of the vehicles listed in Section 34500 VC by various means, one of which is by collecting information relating to the safety performance of the motor carriers who operate those vehicles. Since 1986, that information has been stored in an automated record system, which has been used by the CHP primarily as an internal tool to manage its motor carrier inspection workload.

To ensure that information collected is attributed to the correct motor carrier in the records of the CHP, each record is identified with a CA number, and it is this CA number that Section 34507.5 requires certain persons to obtain. While historically, the CA numbers were merely the means by which those records are identified; today, the CA number is far more relevant in identifying the responsible motor carrier entity.

For years CA numbers were assigned without specific written rules and without a clear objective of identifying the person responsible for the actual motor carrier operations. Conversely, multiple motor carriers have sometimes shared the same CA number due to a lack of recognition in the CHP's records of their existence as separate legal entities. These errors typically occurred because of confusion with business relationships, such as the relationship between motor carriers and independent drivers contracted to drive vehicles leased by the motor carrier. These drivers (independent contractors) were thought to be independent entities, when in fact they were private contractors operating vehicles leased and operated as part of a larger motor carrier operation. In other cases, two or more separate companies were mistakenly treated as a single company because of their close business relationship, when in fact they separate legal entities.

This matter was further complicated when in 1997, the Motor Carriers of Property Permit Act (the Act) was signed into law, which created a new class of motor carrier, the "Motor Carrier of Property" (MCP). Among other things, the Act required all MCPs to obtain a CA number from the CHP, and to register it with the Department of Motor Vehicles (DMV), the agency assigned responsibility for issuing the permits created by the Act.

While, most *MCPs*, as defined in Section 34601 VC, are also *motor carriers* as defined in Section 408 VC, and were therefore already subject to Section 34507.5 VC; due to the separate definitions of those terms, there are some MCPs who are *not* also motor carriers pursuant to Section 408VC. The motor carrier definitions describe two groups that largely overlap one another, but there are many persons who fall into only one of the groups.

This means that there are some persons who are subject to the requirement in Section 34507.5 VC to obtain and display a CA number solely because they are MCPs as defined in Section 34601 VC, even though they are not motor carriers as defined in Section 408 VC. Those persons must obtain a permit from the DMV to operate their vehicles on the highway, but because they are not also *motor carriers*, they are not subject to the motor carrier safety regulations of the CHP. For these reasons, among others, it is more important than ever to ensure greater clarity is added to the regulations in order to more clearly identify the motor carrier, whether defined by Section 408 VC, 34601 VC, or both.

An applicant for a MCP permit obtains the permit to operate certain vehicles on the highway by submitting an application and fee to the DMV and providing proof of adequate insurance as part of the process. The permit represents a privilege that can be suspended or revoked by the DMV. Therefore, the CA number assigned by the CHP now has a dual role. First, it is an identification number that does not entitle the holder to do anything. Second, it is used as the unique identifier for an MCP permit in order to reduce the identifying numbers assigned to the motor carrier industry, and that permit *does* entitle its holder to operate certain vehicles on California highways. In this second role, the CA number represents records that could become exhibits in proceedings to suspend or revoke the MCP permits of unsafe carriers, or of those that consistently fail to comply with applicable laws. Therefore, as already indicated, it is now more important than ever that the regulations regarding CA numbers be further clarified, with special emphasis on preventing duplication, sharing, or transferring of CA numbers when motor carriers

enter into certain business relationships with other motor carriers or independent contractors. The CA number is no longer simply a database key to a motor carrier's safety record. Now it can represent a MCP's privilege to operate on the highway.

As the CHP work to develop a means by which the motor carrier industry can review certain aspects of their own motor carrier records through use of the internet, it becomes increasingly more important to ensure the records are not only accurate, but that they identify the correct business entity. Also, as this system is currently used by CHP enforcement personnel, as well as other law enforcement and regulatory bodies, it is equally important that the number displayed on each vehicle accurately identifies the motor carrier responsible for the current operation of that vehicle.

PURPOSE OF THIS PROPOSED REGULATORY ACTION

The CHP has concluded through numerous discussions with motor carrier industry groups, over the past several years that a great degree of confusion continues to exist with regard to identifying the motor carrier responsible for the day-to-day operations of vehicles which are leased by those motor carriers, with or without drivers. While the identifiable majority of this type of arrangement operates in interstate commerce, the CHP has never adopted the federal rules which govern this type of business arrangement.

As early as the 1950s the United States Department of Transportation (US DOT) recognized the need to provide clarity with respect to identifying the motor carrier when leased vehicles are used to increase or decrease a fleet as necessary to accommodate varying workloads. While this was and still is relevant with most of the interstate over-the-road operations, it is becoming even more relevant to our global economy with California's numerous ocean going marine terminals. Fluxuations in daily port traffic lead to varying equipment needs, usually addressed through leasing of equipment rather than through vehicle purchases which offer limited flexibility in overhead costs.

As a result of this need for varying fleet sizes, the Interstate Commerce Commission (ICC) (succeeded by the Federal Motor Carrier Safety Administration [FMCSA]), an administrative entity under the US DOT, realized two problems existed. First, the overlying motor carriers where using vehicles as part of their fleet when in fact those vehicles actually belonged to other motor carriers; and secondly, when the overlying motor carrier did lease a vehicle, the terms of those written leases were, at best obscure, generally resulting in a small independent operators being taken advantage of by the larger, more business savvy, overlying motor carrier. These problems have led to several regulatory actions by the ICC and the FMCSA. These actions are now contained in Title 49, Code of Federal Regulations (49 CFR), Part 376.

In order to provide a consistent identification of interstate motor carriers under both state and federal rules, it is necessary the CHP adopt rules which are consistent with existing federal rules. This does not necessarily create new rules for interstate motor carriers, because they are already subject to those rules, but it does permit the CHP to both identify interstate motor carriers in the same manner as the FMCSA and to enforce substantially the same requirements on those motor

carriers as our federal counterpart. This will permit the CHP to move one step closer in providing a seamless enforcement of regulations for motor carriers operating in an interstate mode within the boundaries of California.

The CHP also proposes to adopt consistent leasing rules for intrastate MCPs. Those rules which apply to intrastate motor carriers will need to be modeled on the interstate motor carrier rules, but include the necessary changes to accommodate those subtle differences between the FMCSA's motor carrier registration and operating authorities and the DMV's MCP permit.

The proposed rules will conspicuously omit the for-hire passenger transportation industry as well as Household Goods (HHG) carriers as they operate under a separate identification number issued by the California Public Utilities Commission and specific rules adopted by the same agency.

SECTION BY SECTION OVERVIEW

The CHP proposes to amend regulations in 13 CCR, Chapter 6.5 "Motor Carrier Safety" to adopt new Article 6.5, Carrier Identification Numbers; new Section 1235.1, Application for Carrier Identification Number; new Section 1235.2, Motor Carrier Safety Records of the Department; new Section 1235.3, Required Information and Assignment of Identification Numbers; new Section 1235.4, Identification Numbers Nontransferable; new Section 1235.5, Retention of Records by the Department, and new Section 1235.6, Reconciliation of Records.

Chapter 6.5 Motor Carrier Safety

Article 1. Definitions and General Provisions

13 CCR 1200. Scope.

Subsection (b) is proposed to reflect recent changes to legislation. Through AB 3011 (2006) farm labor vehicles (FLV) were added to Section 34500 VC. Because of this legislative amendment, it is no longer necessary to separately identify FLVs from other vehicles listed in Section 34500 VC.

Article 6.5. Carrier Identification Numbers

13 CCR 1235.1. Application For Carrier Identification Number.

Subsection (d) is proposed in order to permit the issuance of additional numbers which may be used for the purpose of tracking motor carriers through other databases. One such use of this proposal would be the issuance and recording of numbers issued by the US DOT for the purpose of accessing the federal Motor Carrier Management Information System (MCMIS) database and tracking the safety records of a motor carrier relative to other motor carriers. This is currently not possible through MISTER. Not only would this permit comparison of safety records; but it would also permit those motor carriers with exceptional safety records to be readily identified.

Subsection (e) is proposed to amend the revision date of the CHP 362, Motor Carrier Profile, to reflect the current January 2007 revision date.

13 CCR 1235.2. Motor Carrier Safety Records of the Department.

Subsection (a) is proposed to repeal the statement indicating all of the information in the record system is public information. While this is true in most instances, certain data (i.e., drivers' license numbers in conjunction with the driver's name and employer identification numbers) is deemed to be confidential in nature. For this reason, the statement is not wholly accurate. This does not preclude the public from obtaining records stored in the system; the majority of the information is available, but certain confidential information will be redacted as required by law.

Subsection (b) is proposed to amend a reference to additional tracking numbers as part of the information which may be part of a carrier record.

13 CCR 1235.4. Identification Numbers Nontransferable.

Subsection (b) is proposed to add language which will clarify the intent of the subsection to permit the Department to delete a CA number which has been inadvertently issued to a motor carrier as a result of the motor carrier's attempt to circumvent or thwart an action against that motor carrier. It has been a longstanding practice of the regulated community to simply apply for a new CA number and continue operations as a new motor carrier in order to avoid a suspension action against the original motor carrier entity.

While the subsection was initially proposed in an effort to prevent this type of circumvention, some question has existed as to whether the Department is authorized to delete a CA number once it has been issued. This amendment will clarify that matter.

13 CCR 1235.7. Leased Vehicles.

Subsection (a) proposes to establish the applicability of the leasing requirements proposed by this section.

Subsection (b) is proposed to define certain terms unique to vehicle leases.

Subsection (c) proposes to specify general leasing requirements for the purpose of establishing criteria to permit a motor carrier to use equipment it does not own. Section 408 VC and Section 1201 of this code define a motor carrier as, among other conditions, a person who leases vehicles listed in Section 34500 VC. The purpose of this proposal is to lend clarity to the conditions which constitute a lease under the motor carrier definition.

Subsection (c) is intended to specify specific terms for a written lease, the transfer of equipment, vehicle identification, and record retention requirements. These requirements are necessary in order to ensure adequate enforceability of the regulations.

Subsection (d) proposes to list specific requirements which constitute a written lease agreement required by subsection (c). These written requirements are not intended to place the CHP in a position of dictating conditions which already exist for the purpose of creating binding leasing requirements, but are intended to clearly identify a motor carrier and ensure motor carrier regulations are applied to the correct person.

For a number of years motor carriers operating under the interstate motor carrier safety regulations have been subject to leasing regulations consistent with the regulations proposed by these amendments. However, those rules are unenforceable by the CHP as those rules have yet to be adopted by the state. This proposal will permit the enforcement of these specific provisions for intrastate motor carriers using equipment they do not own.

Subsection (e) proposes to provide certain exceptions to the requirements of this proposal. Except for the vehicle marking requirements, certain operations are exempted from the remainder of the vehicle leasing requirements during the course of the exempted activity.

Subsection (f) proposes to provide conditions under which an authorized carrier may lease equipment to or from another authorized carrier. Provided the prescribed written agreement is maintained as required, a written lease agreement is not required.

Subsection (g) proposes to adopt the October 1, 2007, edition of Title 49, Code of Federal Regulation, Part 379, for interstate motor carriers and drivers. In order to draw a clear distinction between the rules for interstate and intrastate drivers, the CHP is proposing to address the rules separately. Therefore, subsections (a) through (f) will only refer to intrastate drivers and motor carriers and subsection (g) will only refer to interstate drivers and motor carriers. This will provide interstate drivers and motor carriers with seamless uniformity between state and federal leasing regulations, thereby, permitting interstate motor carriers to operate under one set of rules.

Subsection (h) is being added to provide an address and telephone number to assist the affected industry in obtaining copies of the federal regulations referenced in subsection (g).

13 CCR 1256. Identification.

Subsection (a) proposes to add language requiring clear identification of the motor carrier operating each commercial motor vehicle. Specifically, when more than one name is displayed on a motor vehicle, the name of the motor carrier operating that vehicle would be preceded by the words “operated by.” This is also required under federal marking rules. This proposal will lend clarity to the marking requirements and permit interstate and intrastate motor carriers to operate under a single set of vehicle marking requirements.

Subsection (b) proposes to add the vehicle marking requirements specific to the CA number issued pursuant to Section 1235.3. This requirement also contains exceptions for vehicles displaying a valid number issued by the US DOT or the California Public Utilities Commission.

Subsection (f) is proposed to permit the display of additional information to a vehicle, provided that display is not specifically prohibited or in conflict with the requirements of Section 1256.

Subsection (g) is proposed to provide specific requirements for the display and maintenance of the information required by Section 1256.

Subsection (h) is proposed to permit the use of removable devices in lieu of permanently marking a vehicle with the required identification information.

STUDIES/RELATED FACTS

None.

LOCAL MANDATE

These regulations do not impose any new mandate on local agencies or school districts.

IMPACT ON SMALL BUSINESS

The CHP has not identified any significant impact on small business. This does not represent an additional mandate on motor carriers, but simply provides a method by which an intrastate motor carrier can operate vehicles it does not own. This is not to say a motor carrier who chooses to operate under the provisions of this regulatory process will not incur certain administrative costs; the fact is, a motor carrier who elects to use these provisions would voluntarily subject themselves to the administrative costs associated with certain document preparation and retention requirements required by this rulemaking, but it is important to recognize, this is a business option which does not currently exist.. However, an intrastate motor carrier who continues to operate its own vehicles, under the current rules, would be completely unaffected by this proposal. Interstate motor carriers are already subject to the requirements proposed by Section 1235.7(g). Adoption of the federal rules simply permits the CHP to enforce those rules already included in 49 CFR, Part 376. Should the motor carrier industry identify any costs not identified by this rulemaking; the CHP would encourage input on this matter during the comment period.

ALTERNATIVES

The CHP has not identified any alternative, including the no action alternative, which would be more effective and less burdensome for the purpose for which this action is proposed. Additionally, the CHP has not identified any alternative which would be as effective, and less burdensome to affected persons other than the action being proposed.

Alternative Identified and Reviewed

1. Make no changes to the existing regulations. This alternative would leave intrastate motor carriers without a clear means by which to include leased vehicles, other than those leased through a leasing company, as part of their fleet. While this is not a wide-spread practice among intrastate motor carriers, it is necessary to ensure intrastate motor carriers with the

same flexibility as interstate motor carriers. At the same time, the “make no changes” alternative would continue to exacerbate the CHP’s current lack of enforcement authority with regard to interstate motor carriers “leasing” vehicles in order to meet various transportation needs.

ECONOMIC IMPACT

The CHP has determined that this new regulation will result in:

- No significant compliance costs for persons or businesses directly affected. Any impact to the transportation industry would be realized through voluntary use of the proposed leasing regulations.
- No discernible adverse impact on the level and distribution of costs and prices for large and small business.
- No impact on the level of employment in the state.